

REMARKS

Claims 22, 37, 39 and 47 have been amended. No claims have been canceled. New claim 56 has been added. Accordingly, claims 22, 25, 28, 37, 39, 42, 44-45, 47, 52-53, 55 and 56 are currently pending for examination in the above-identified application. The remaining pending claims have been withdrawn due to a restriction requirement.

In response to Applicant's comment that reversible enhanced thermal properties are not inherent to a composite, the Examiner responds by stating that these properties assist in the "wicking of moisture/vapor from one side of the composite to the other". Applicant assumes that this is an inadvertent misstatement by the Examiner. The remainder of the Office Action seems to indicate that the Examiner does properly understand the meaning of "reversible enhanced thermal properties".

Information Disclosure Statement

On February 9, 2000, June 7, 2002 and October 29, 2002 Applicant filed an Information Disclosure Statement. However, the Examiner has not returned an initialed copy of the PTO-1449 Form, page 2 from the February 9, 2000 Information Disclosure Statement, nor the PTO-1449 Forms filed on June 7,

2002 and October 29, 2002. Accordingly, Applicant requests the Examiner initial and return copies of the attached PTO-1449 Forms to indicate that the documents have been considered.

35 U.S.C. §112

Claims 22, 25, 28, 37, 39, 42, 44, 45, 52, 53 and 55 stand rejected under 35 U.S.C. §112, second paragraph.

The Examiner objects to the term "footwear" as used in the claims. The Examiner's attention is directed to the numerous patents that have been issued which simply claim "footwear" in the preamble. Therefore, Applicant contends that no amendment is necessary. However, Applicant will consider any suggestion offered by the Examiner in order to speed the prosecution of this application.

35 U.S.C. §103

Claims 22, 25, 28, 37, 39, 42, 44, 45, 47, 52, 53 and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Colvin et al (U.S. Patent No. 5,537,389). These rejections are traversed as follows.

The entire premise of the Examiner's argument can be summed up in the following quote found on page 5 of the Office Action:

"A person having ordinary skill in the art at the time of the invention was made, would have found it obvious to have employed the nonwoven layer of Ogden in the composite of Colvin et al. One would have been motivated to do this for the simple reason of using what is readily available, commonly used, and inexpensive. (Underlining added.)"

Applicant requests the Examiner to quote any authority for this purported standard of patentability. According to this standard, no patentability can be found in any combination in which the individual elements are well-known. Applicant submits such a position is clearly erroneous and unsupportable.

The Examiner refers to column 2, lines 66-67 of Colvin et al where it is stated that fabric layers are attached to one or both sides of the foam, depending upon the particular application involved. The Examiner then apparently concludes that the nonwoven taught by Ogden can be one of the "fabric layers" taught by Colvin et al in order to arrive at the presently claimed invention. This is clearly an improper use of hindsight reasoning.

Nowhere do Colvin et al suggest that a nonwoven material may be positioned adjacent to the foam layer in order to

absorb and transfer moisture vapor from the foam layer. Similarly, nowhere does Ogden disclose that a nonwoven layer should be positioned adjacent to a foam layer in order to absorb and transfer moisture away from the foam layer.

Colvin et al describes a thermally enhanced foam insulation for temperature regulation. Ogden discloses an apertured top layer that protects a foot from blistering and other discomfort caused by movement of the foot with respect to a sock (see column 6, lines 37-40). A nonwoven layer is provided under this apertured top layer in order to absorb moisture. A foam layer is provided below the nonwoven layer in order to provide cushioning. Ogden neither teaches nor suggests that a nonwoven layer should be provided in order to absorb and transfer moisture away from a foam layer that is breathable and transfers moisture.

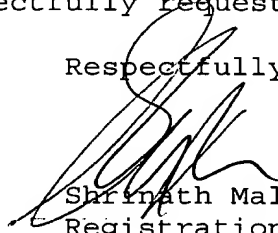
Therefore, it is once again submitted that one of ordinary skill in the art would not be motivated to completely rearrange the order of layers of Ogden including incorporating the foam layer of Colvin et al so as to arrive at the presently claimed invention. The Examiner is hereby requested to point out why one of ordinary skill in the art would be motivated by the combination of these references to realize footwear in which a foam having reversible enhanced thermal

properties and being breathable is positioned adjacent to a nonwoven material which absorbs and transfers moisture from the foam. Instead of merely repeating previously made rejections, the Examiner is hereby requested to appropriately respond to the arguments presented in this response in order to further prosecution.

Conclusion

In view of the foregoing amendments and remarks, Applicants contend that the above-identified application is now in condition for allowance. Accordingly, reconsideration and reexamination are respectfully requested.

Respectfully submitted,



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